
Appeal Decision

Site visit made on 4 May 2022

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 May 2022

Appeal Ref: APP/U3935/W/21/3287815

Ferndale Junior School, Wiltshire Avenue, Rodbourne Cheney, Swindon SN2 1NX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Rhea Reynolds of Ferndale Primary and Nursery School against Swindon Borough Council.
 - The application Ref S/21/1270, is dated 26 July 2021.
 - The development proposed is the relocation of 2.4m high fencing to the northern boundary.
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Decision

1. The appeal is allowed and planning permission is granted for the relocation of 2.4m high fencing to the northern boundary at Ferndale Junior School, Wiltshire Avenue, Rodbourne Cheney, Swindon SN2 1NX in accordance with the terms of the application, Ref S/21/1270, dated 26 July 2021, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan, drawing number FER-10 rev A; Site Block Plan, drawing number FER-11 rev A; Existing Site Area Plan, drawing number FER-12 rev A and Proposed Site Area Plan, drawing number FER-13 rev A.

Procedural Matter

2. The appeal is made against the Council's failure to give notice of their decision within the prescribed period. However, it is clear from the Council's submissions that had they been in a position to make the decision, they would have refused the proposal as they contend it would restrict access to open space to the detriment of health and well-being.

Main Issues

3. The main issue is the effect of the proposal on access to open space and recreation having regard to local and national planning policies.

Reasons

4. Approximately 2.4m high powder coated mesh fencing is in situ at other points around and within the school grounds. It is proposed to move a section of existing fencing in the order of 45m to the north. This would enclose the playing pitch nearest the school buildings from the majority of the playing fields to the north. The appellant indicates that this is proposed for reasons of security and pupil safeguarding.
5. The Council equates the relocation of the fence to the loss of open space and community facilities. Policy CM4b of the Swindon Borough Local Plan 2026, March 2015 (LP) generally seeks to resist proposals that result in the loss of established community facilities. However, the information before me indicates that the land proposed to be enclosed is within the ownership and control of the school and I have not seen any evidence to suggest otherwise. Schools are included in the list of community facilities at paragraph 4.309 of the LP. Moreover, there is no suggestion that the proposal seeks to remove the playing pitch, rather that it would be enclosed. It follows that the proposal would not result in the loss of either the primary school or its associated playing pitch. Hence, the criteria contained within policy CM4b would not be triggered.
6. Policy CM2 of the LP seeks to enable active, healthy and safe lifestyles and amongst other matters, refers to increasing access to green spaces to promote health and mental wellbeing and the protection and improvement in the stock of playing pitches. Furthermore, policy EN3b of the LP generally seeks to protect public open space assets defined on the policies map from development. The Council confirms that the appeal site is denoted as such on the policies map.
7. Paragraph 4.340 of the LP defines open space of public value as primarily open land, whether green or hard surfaced, which offer important opportunities for sport and recreation and can act as a visual amenity. This includes parks and gardens, public amenity areas, play areas, allotments, private and public playing fields, rivers, lakes, canals, nature reserves and other outdoor sports provision such as bowling greens. Neither policy CM2 nor EN3 suggest that it seeks to influence questions of ownership, security or detailed management. There is little in the policy wording to support the interpretation that open space of public value equates to unrestricted public access.
8. Notwithstanding the present lack of physical demarcation from the playing fields to the north and customary way the land may have been used in the past, given the ownership of the appeal land, there is little to suggest that it constitutes freely accessible public open space. The relocated fence may prevent potentially otherwise unrestricted access to a junior playing pitch that is part of the school grounds, but it seems to me that is rather the point. During school hours this would improve the security for the school and pupils using the pitch either through general play or more organised sports activity. Paragraph 95 of the National Planning Policy Framework (the Framework) states that great weight should be given to the need to create, expand or alter schools in decisions on applications.
9. I acknowledge that if additional use could be made of the pitch outside of school hours, then this would be likely to confer wider community benefits. Paragraph 98 of the Framework generally recognises that access to opportunities for sport and physical activity is important to the health and well-

being of communities. Nevertheless, the relocation of the fence would not necessarily prevent wider community usage, but it would reinforce that the specific agreement of the school would be required as to when and for what purposes the premises were being used. This would be likely to assist in improving the security of the school grounds.

10. There is nothing before me to suggest that the proposal seeks to alter the use of the land enclosed primarily as a sports pitch, and the physical extent and form of the fencing is of an ancillary nature. These factors lead me to find that the open and sporting use of the land would not be thwarted by the proposal and hence, it would not conflict with policy EN3 of the LP. Moreover, the proposal would not reduce the stock of playing pitches and so would avoid conflicting with policy CM2 of the LP.
11. Additionally, access to the significant area of playing fields adjacent to the school premises would generally be unaffected by the presence of the fence. Although at my site visit, I noted that the pedestrian and vehicular entrances to this space were locked and the information before me does not detail what the access arrangements to that space are. Nevertheless, it is not shown that the ability to access that existing open space would be unduly prejudiced by the proposal and little substantive evidence has been provided to support the assertion that the relocated fence would severely affect the quality of life of local residents.
12. Accordingly, the proposal would not have an unacceptably harmful effect on access to open space and recreation having regard to national planning policy. Furthermore, the Framework generally gives considerable support for schools to make alterations. Based on the information before me, and for the reasons outlined I do not find that the proposal would conflict with policies CM2, CM4 or EN3 of the LP.

Other matters

13. It is put to me that the appellant has not shown that the proposed fence is necessary, and it is asserted that existing fencing arrangements would suffice. Nevertheless, given my findings in relation to the main issue, there would be no policy justification to demand further explanation relating to the need for the development.
14. The specific details of how the proposed enclosed land would be accessed for maintenance are matters that the school can resolve in due course. There is little reason to suppose that adequate access could not be achieved.
15. There is some suggestion that the proposal would be detrimental to the character and appearance of the area. However, it would be similar to fencing already in situ and would appear in keeping with the context. Overall, the realignment of the fencing would be a modest alteration that is likely to have a broadly neutral impact on the character and appearance of the area.
16. I have had regard to the suggestion that the appeal site should be subject to a statutory trust for the public. It is further asserted that the proposal represents a waste of public money that would be better spent on education. Planning law requires that applications for planning permission be determined in accordance

with the development plan, unless material considerations indicate otherwise¹. I have determined the proposal before me on that basis and will leave matters of how public funds are best distributed and allocated to the administrative bodies specifically tasked with those responsibilities.

Conditions

17. The three-year period in which the planning permission may be implemented is a statutory requirement. I also consider that it is necessary to specify the plans that are approved, and that the development shall be undertaken in accordance with these, as this provides certainty. The plans state that the proposed fence would be a 2.4m high, blue powder coated weld mesh fence which would be similar to fencing elsewhere around the school grounds. However, I observed that the existing section of fence to be relocated is currently finished in black. As either colour finish would be acceptable, I do not consider it necessary to impose a further condition to specify that the materials shall match the existing fencing as suggested by the Council.

Conclusion

18. For the reasons given above I conclude that the appeal should be allowed.

Helen O'Connor

Inspector

¹ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.